IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 895 of 2005.

Judgment reserved on:18.6.2007

Date of Decision: July 16, 2007

M/s Indo Farm Tractors & Motors Ltd. …Petitioner.

Versus.

Union of India & ors. ..Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, J.
The Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting?

For the Petitioner: M/s J.M.Bansal & Harmeet Singh, Advocates.

For the Respondents: Mr. Sandeep Sharma, Assistant Solicitor General of India.

Deepak Gupta, J.

The petitioner by means of this writ petition has prayed that the respondents have no jurisdiction to collect any cess leviable on tractors and, therefore, the letter Annexure P1 whereby it has been advised to deposit the automobile cess and education cess may be quashed.

The petitioner- company is engaged in manufacture of tractors. According to the petitioner- company no excise duty is leviable on tractors. Further according to the petitioner-company, as per the notification issued in respect of Uttranchal and Himachal Pradesh the industries situate in the areas specified in the said notification have been exempt from payment of excise duty and additional duty of excise leviable under the Central

Excise Act, the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978.

The Parliament has enacted the Industries (Development and Regulation) Act, 1951 (for short: IDRA). Section 9 of the said Act reads as follows:-

"S.9. Imposition of cess on scheduled industries in certain cases – (1) There may be levied and collected as a cess for the purpose of this Act on all goods manufactured or produced in any such scheduled industry as may be specified in this behalf by the Central Government by notified order a duty of excise at such rate as maybe specified for different goods or different classes of goods:

Provided that no such rate shall in any case exceed two annas per cent of value of the goods.

Explanation: In this sub-section, the expression "value" in relation to any goods shall be deemed to be the wholesale cash price for which such goods of the like kind and quality are sold or are capable of being sold for delivery at the place of manufacture and at the time their removal therefrom, without any abatement or deduction whatever except trade discount and the amount of duty payable.

(2) The cess shall be payable at such intervals, within such time and in such manner as maybe prescribed, and any rules made in this behalf may provide for the grant of a rebate for prompt payment of the cess.

(3) The said cess may be recovered in the same manner as an arrear of land revenue.

(4) The central Government may handover the proceeds of the cess collected under this section in respect of the goods manufactured or produced by any scheduled industry or group of scheduled industries to the Development council established for that industry or group of industries and where it does so, the Development council shall utilize the said proceeds:-

a. To promote scientific and industrial research with reference to the scheduled industry or group of scheduled industries in respect of which the Development council is established;

b. To promote improvements in design and quality with reference to the products of such industry or group of industries;

c. To provide for the training of technicians and labour in such industry or group of industries;

d. To meet such expenses in the exercise of its functions and its administrative expenses as may be prescribed."

Pursuant to the provisions of Section 9, the Ministry of Industry (Department of Heavy Industry) issued an order dated 6.9.1985 levying a duty on tractors @ 1/8 per cent ad volerum. The Ministry of Industry, Department of Industries Development vide order dated 22.3.1990 imposed duty of excise as Cess on goods specified in the scheduled Industry of Transportation known as Automobile. The cess was levied on motor cars, buses, trucks, jeep type, vehicles, vans, scooter, motorcycles, mopeds and all other automobiles.

The respondents on 9.7.2004 under Sections 91 to 93 of the Finance Act imposed another excise duty called Education Cess @ 2% of aggregate of all duties of excise including special duty of excise or any other duty of excise.

The cess levied on automobile is collected under the Automobile Cess Rules, 1984. The case of the petitioner is that the levy imposed on tractors cannot be collected under the Automobile Cess Rules. Further according to the petitioner, since the tractors are exempt from excise duty itself, no cess can be levied. The petitioner further contended that in view of the notifications issued by the respondents, the industries set up in the areas of Uttranchal and Himachal Pradesh are exempt from payment of excise duty and as such no such cess can be collected from them.

The respondents have raised preliminary objection that since only an advisory letter has been issued to the petitioner-company, the writ petition is pre-mature and not maintainable. It

has also been pointed out that the respondents are entitled to collect the cess levied on tractors as per Automobile Cess Rules. It is further contended by the respondents that the exemption only applies to the excise duty and not to the cess payable under the IDRA or Education cess leviable under the Finance Act.

There is no manner of doubt that under the IDRA, a cess has been imposed upon the tractors. The question which first arises is whether tractors fall within the definition of automobile and therefore, can the cess be recovered under the Automobile Cess Rules, 1984 or not?

The first Schedule to the IDRA classifies different goods under different headings. Headings 7 and 10 of the First Schedule are relevant and read as follows:-

> " 7. **Transportation**
>
> (1) Aircraft
>
> (2) Ships and other vessels drawn by power
>
> (3) Railway locomotives
>
> (4) Railway rolling stock
>
> (5) Automobiles (motor cars, buses, trucks, motor cycles, scooters sand the like)
>
> (6) Bicycles
>
> (7) Others, such as fork lift trucks and the like
>
> **10. Agricultural Machinery**
>
> (1) Tractors, harvesters and the like
>
> (2) Agricultural implements."

Under rule 2(b) of the Automobile Cess Rules 'automobile' has been defined as under:-

> (b) 'Automobile' means motor cars, buses, trucks, jeep type vehicles, vans, scooters, motorcycles, mopeds, and all other

> automobiles covered under the sub-heading (5) of Heading 7 'Transportation' of the First Schedule to the Act;"

It is clear from a reading of the aforesaid provisions that the intention of the legislature was to treat tractors differently and by virtue of definition clause, tractors cannot be said to be falling within the definition of automobile in the Automobile Cess Rules. Heading 7 of the first Schedule of the IDRA, deals with 'Transportation'. Various types of transport vehicles are mentioned but tractors are not included in heading 7. Tractors have been specifically included in heading 10 relating to 'Agricultural Machinery'.

The contention of the respondents that following the definition of 'Motor Vehicle' in the Motor Vehicles Act, 1988 and the general meaning of the term automobile, a tractor is also a motor vehicle and should be treated as such, cannot be accepted. The Parliament in its wisdom has intentionally treated tractors differently from other automobiles. Tractors have not been included in heading 7 nor are they impliedly or explicitly included in the definition of automobile in the Automobile Cess Rules which also specifically makes mention of heading 7. We are, therefore, of the opinion that the cess leviable on tractors cannot be recovered under the Automobile Cess Rules.

Though there is no manner of doubt that cess has been levied on tractors, the respondents have failed to point out to us that any machinery has been prescribed under law for recovery of the cess. Therefore, we have no other option but to hold that the cess leviable on tractors cannot be recovered till the rules are

framed or executive instructions are issued for recovery and collection of the cess.

In view of the fact that we have held that there is no machinery provided for collection of recovery of cess, we over-rule the preliminary objection raised by the respondents that the petition is pre mature. Since there is no machinery provided, the petitioner has no forum to ventilate his grievance. Therefore, this court has jurisdiction to entertain this petition.

However, we are not in agreement with the petitioner that since tractors are exempt from payment of excise duty, no cess can be levied. The exemption notification has to be construed strictly in accordance with the terms of the notification. Tractors admittedly are goods on which excise duty/ additional excise duty can be levied. However, the State in its wisdom thought it fit to exempt tractors from payment of excise duty. However, this exemption cannot be extended to the payment of cess provided under the IDRA. No notification has been brought to our notice whereby there is exemption given from payment of the cess payable under the IDRA. In fact as pointed out above, the Ministry of Industry (Department of Heavy Industry) has specifically levied cess on tractors.

As far as the notification regarding exemption of industries from excise duty in Uttranchal and Himachal Pradesh is concerned, the said notification specifically states that the industries shall be exempt from the payment of whole of the duty of excise or additional duty of excise leviable under the Acts mentioned in the notification. The said notification only makes

mention of the Central Excise Act, 1944, Additional Duties of Excise (Goods of Special Importance) Act, 1957 and the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978. This notification makes no reference to the IDRA or the Finance Act. Therefore, we are of the view that the petitioner is liable to pay the cess on tractors as well as education cess.

The contention of the petitioner that the Education cess is levied @ 2% of the aggregate of the duties and since the petitioner has been exempted from paying excise duty , this 2% cess cannot be calculated, is not tenable. The excise duty can always be calculated even if it is not collected and on this notional calculation, the education cess can be calculated. This cess has to be collected in terms of the Finance Act.

In view of the above discussion, we reject the contention of the petitioner that it is not liable to pay the cess leviable under the IDRA or the Education Cess levied under the Finance Act, 2004. However, in both the cases, cess can only be recovered from the petitioner as per law and cannot be recovered under the Automobile Cess Rules.

The writ petition is disposed of in the aforesaid terms. No costs.

(Deepak Gupta), J

July 16, 2007. (Surinder Singh), J.

s.

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Judgment for consideration, please.

(Deepak Gupta), J.

I agree/ do not agree.

(Surinder Singh), J.

List the writ petition for pronouncement of judgment on _____July 2007.

(Deepak Gupta), J.

Court Secretary.